Supreme Court, U.S.
FILED

OCT 9 2001

OFFICE OF THE CLERK

No. 01-228

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

RONALD WATSON LAFFERTY,

Petitioner,

v.

STATE OF UTAH,

Respondent.

On Petition for Writ of Certiorari
To the Supreme Court of the State of Utah

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

MARK SHURTLEFF (4666)
Utah Attorney General
J. FREDERIC VOROS, JR. (3340)
Chief, Appeals Division
KRIS C. LEONARD (4902)*
Assistant Attorney General
Counsel for Respondent
160 East 300 South, 6th Floor
P O BOX 140854
Salt Lake City, Utah 84114-0854
Telephone: (801) 366-0180
Facsimile: (801) 366-0167

*** Counsel of Record**

QUESTIONS PRESENTED

I. Should this Court review a state court's unanimous determination that technical procedural violations of state statutory law which occurred in connection with a competency hearing were harmless under the specific circumstances of this case where petitioner fails to establish that any of the violations implicates the constitution, and the state supreme court's ruling is consistent with prior decisions of this Court which require a review of the circumstances of each case?

II. Should this Court review a state court's unanimous determination under the appropriate legal standard that concerns voiced by petitioner's counsel and his expert concerning his trial behavior did not warrant an additional competency hearing?

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all the parties.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING..... ii

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIES v

OPINION BELOW 2

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

STATEMENT OF FACTS..... 8

ARGUMENTS 11

INTRODUCTION..... 11

POINT I..... 12

POINT II..... 16

CONCLUSION 18

APPENDIX A. Utah Code Ann. § 77-15-1, *et seq.* (1995)

TABLE OF CITED AUTHORITIES

FEDERAL CASES

Drope v. Missouri, 420 U.S. 162, 95 S. Ct. 896, 43 L.Ed.2d 103 (1975). 12, 14

McGregor v. Gibson, 248 F.3d 946 (10th Cir. Okla. 2001) . . . 12, 15

Pate v. Robinson, 383 U.S. 375, 86 S. Ct. 836, 15 L.Ed.2d 815 (1966) 12, 15

STATE CASES

Lafferty v. Cook, 949 F.2d 1546, 1552 (10th Cir. 1991), cert. denied, 504 U.S. 911 (1992) ["Lafferty II"]. 3, 4

State v. Lafferty, 749 P.2d 1239 (Utah 1988), rev'd by 949 F.2d 1546 (10th Cir. 1991) ["Lafferty I"]. 3

State v. Lafferty, 2001 UT 19, 20 P.3d 342 . . . . . 2, 8, 13, 14, 15, 17

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment XIV Section 1 2

FEDERAL CODE

28 U.S.C. § 1257(a). 2

STATE STATUTES

Utah Code Ann. § 76-4-201 (1999). 4

Utah Code Ann. § 76-5-202(1)(b) (1995) 4

Utah Code Ann. § 76-5-203 (1995). 4

Utah Code Ann. § 76-6-203 (1999). 4

Utah Code Ann. § 77-15-1 *et seq.* (1995) 3, 12, 13, 16

No. 01-228

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2001

RONALD WATSON LAFFERTY,

Petitioner,

v.

STATE OF UTAH,

Respondent.

On Petition for Writ of Certiorari
To the Supreme Court of the State of Utah

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The Utah Attorney General, on behalf of the State of Utah, respectfully requests this Court to deny the petition for a writ of certiorari to review the judgment of the Supreme Court of the State of Utah in this case.

OPINION BELOW

The opinion of the Utah Supreme Court is reported at State v. Lafferty, 2001 UT 19, 20 P.3d 342, and is attached to the petition for writ of certiorari as appendix A.

JURISDICTION

The judgment of the Utah Supreme Court was entered on February 23, 2001. A petition for writ of certiorari was submitted to this Court on May 24, 2001, but was returned by the court clerk due to a deficiency. A revised petition was filed in this Court on August 7, 2001–165 days following entry of the Utah Supreme Court's opinion, as permitted by Rules 13.1, 13.5 and 14.5, Rules of the Supreme Court of the United States. Accordingly, this Court has jurisdiction to review petitioner's claims under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment XIV Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah Code Ann. § 77-15-1, *et seq.* (1995)

(complete text is attached in appendix A).

STATEMENT OF THE CASE

This appeal is from petitioner's second capital trial for the murders of his sister-in-law, Brenda Lafferty, and her infant daughter, Erica, and related crimes. During the proceedings related to the first trial, several competency reviews were held. The first review involved two court-appointed alienists, Dr. Jess Groesbeck and Dr. Phillip Washburn, and resulted in a determination by the court that petitioner was competent to proceed to trial (Record [hereinafter "R."] 154-59, 376). A second review, involving an evaluation performed at the Utah State Hospital, resulted in a similar determination (R. 468-473). Petitioner thereafter attempted to commit suicide by hanging himself, and a third competency review was had (R. 265, 423-26). The court found petitioner incompetent to proceed and sent him to the state hospital for treatment. Lafferty v. Cook, 949 F.2d 1546, 1552 (10th Cir. 1991), cert. denied, 504 U.S. 911 (1992) ["Lafferty II"]. After a fourth and final competency review before petitioner's first trial, the trial court ultimately found that there was insufficient evidence to establish that petitioner was incompetent to stand trial (R. 423-26).[1] Trial proceeded in 1985, and petitioner was convicted of the two capital felonies and related crimes and was sentenced to death (R. 658-60). The Utah Supreme Court affirmed his convictions and sentences on direct appeal. State v. Lafferty, 749 P.2d 1239 (Utah 1988), rev'd

---

[1]The four experts for the fourth evaluation all came from the Utah State Hospital: Van O. Austin, M.D., Robert J. Howell, Ph.D., Peter Heinbecker, M.D., and Jess Groesbeck, M..D. (R. 423-26). The State also called Eugene Thorne for this competency hearing (R. 5450:52).

by 949 F.2d 1546 (10th Cir. 1991) ["Lafferty I"]. Petitioner filed a federal habeas petition, which was ultimately denied. Lafferty appealed to the Tenth Circuit, which ruled that the trial court had used the wrong legal standard to determine the issue of petitioner's competency to stand trial, then granted the petition for writ of habeas corpus and vacated petitioner's convictions and sentences. Lafferty II, 949 F.2d at 1556.

Petitioner was again charged with two first-degree felony counts of capital homicide, in violation of Utah Code Ann. § 76-5-202(1)(b) (1995); aggravated burglary, in violation of Utah Code Ann. § 76-6-203 (1999); and conspiracy to commit first-degree homicide, in violation of Utah Code Ann. § 76-4-201 (1999) and § 76-5-203 (1995) (R. 3712-14). Competency examinations occurred at the Utah State Hospital in 1992, and testimony was ultimately received from Dr. Louis Moench, Dr. Robert Howell, and Dr. Phillip Washburn (R. 3462-64, 3473-74). The trial court found that petitioner was not competent to proceed to trial as of November 19, 1992, because of mental illness and remanded him to the Utah State Hospital for treatment (R. 3599-601). A subsequent competency hearing was held on April 4, 1994, at which Dr. Steven Golding and Dr. Noal C. Gardner testified (R. 3612-13).[2] The trial court found petitioner competent to proceed to trial (R. 3612-13; R. 5423:207).

Trial was delayed by petitioner's filing of numerous motions and by disqualification of the county attorney's office (R. 3634-3710, 3747-54, 4010-13, 4043-54, 4309-4416). On February 26, 1996, petitioner filed a motion opposing his removal from the

---

[2]Respondent believes petitioner's reference to a competency hearing on February 4, 1994, is, in fact, a reference to this *April* 4 hearing. Petition at 5.

courtroom in the event he engaged in verbal or physical outbursts during trial (R. 4626-39). Allegations in the supporting memorandum concerning petitioner's competency caused sufficient concern to the State that it sought further examination to determine whether another competency hearing was required (R. 5435:40-62). The trial court permitted an expert from each side to examine petitioner (R. 5435:62-64). Based on the experts' reports, the court ordered a full competency hearing, requiring that the eight experts who had previously seen petitioner examine him to determine his current level of competency (R. 5436:3-8). Dr. Gardner, Dr. Golding, Dr. Cohen, and Dr. Wooton testified at the March 1996 hearing that petitioner was not mentally ill and was competent to proceed to trial (R. 5438:57, 205; R. 5439:17-18, 22-25, 84-85). Dr. Howell, Dr. Groesbeck, and Dr. Washburn testified that petitioner was mentally ill and was not competent to proceed to trial (R. 5437:24; R. 5438:35, 48). Dr. Heinbecker was not willing to say whether or not petitioner was competent without further evaluation (R. 5438:10-13, 16).[3]

Following the March competency hearing, the trial court issued a detailed memorandum decision and thorough findings of fact on petitioner's competency to stand trial (R. 4754-73, 4957-67, 5330-35, 5382). These exhaustive documents provide a solid basis for the court's determination that petitioner was competent to stand trial under the appropriate legal standard. Both documents are comprehensive in outlining the rationale for the court's decision, including specific reasons why petitioner's expert witnesses'

---

[3]Pursuant to rule 15.2, respondent notes that petitioner erroneously represents that Dr. Heinbecker "opined that Lafferty was not competent to proceed" to trial. Petition at 8.

testimony was unconvincing and entitled to little weight (R. 4754-73, 4957-67).

The court's sixteen-page memorandum decision and its later order also specify why the testimony of the State's expert witnesses was more credible and provided a more detailed, more well-reasoned explanation for petitioner's behavior. The judge credited the ability of the State's expert witnesses to cite to specific parts of their interviews with petitioner to support their conclusions, to apply, in detail, the requisite competency standard, and to identify specific examples to illustrate why petitioner did not have a mental illness (R. 4768-69). The State's expert witnesses gave persuasive explanations for petitioner's "revelations" and demonstrated convincingly how petitioner's background and upbringing largely contributed to what the experts were seeing in petitioner (R. 4762-64). The court also found the testimony from the State's expert witnesses was corroborated, in part, by the testimony of two lay witnesses who had observed the petitioner over a long period of time during his incarceration and who had not observed any of the signs or symptoms associated with the mental illnesses diagnosed by petitioner's expert witnesses (R. 4769). This testimony was significant in view of expert testimony that the symptoms of petitioner's disorders would be readily visible even to a lay person (R. 5439:22-25; R. 5452:249).

In addition, the court noted its own interaction with petitioner and its opportunities to observe him during the proceedings (R. 4767-68). Those experiences more closely aligned with the explanations provided by the State's expert witnesses about petitioner's perceptions of reality and motivations behind many of his actions (id.). For example, the court noted petitioner's obvious "wit and warmth" and his easy ability to engage in ordinary kinds

of conversation (R. 4765-66). The court also noted that some of petitioner's stances are "not atypical" of other defendants, that many of his views are "consistent with his fundamentalist religious and political upbringing," and that his conduct and claims were rationally-based and arose from his real experiences (R. 4766; R. 5438:59-96, 198-206; R. 5439:18-20, 73).[4]

The trial court determined that the evidence amply demonstrated that petitioner accurately perceived and related to reality, was capable of sound reasoning, could assist others in following his thoughts, could recall and communicate pertinent information as he desired, and was willing to consider and discuss legal options (R. 5438:105, 115-16, 192-93, 195-205, 215-16, 226-27; R. 5439:18-20, 62-64, 72-73, 186). The judge found petitioner competent to proceed, and the case went to trial in March 1996 (R. 5444).[5]

---

[4]For example, the State's expert witnesses noted that petitioner intentionally adopted ideas and labels encountered in his everyday existence, such as the term "reflector shield" taken from the program "Star Trek" (R. 5438:59), and "travelers" from a book by Dean Koontz (R. 5438:59-60). He also adopted concepts from other religions–e.g., petitioner's "good spirits" paralleled other people's "guardian angels" (R. 5438:60-62), and the idea of travelers entering and exiting a body or occupying several hosts paralleled the exorcism and reincarnation beliefs of some religions (R. 5438:60-64).

[5]Pursuant to rule 15.2, respondent clarifies the facts surrounding petitioner's subsequent mid-trial discussion with the trial judge concerning petitioner's conduct. Petition at 8-9. Respondent notes that petitioner's representations to the trial judge in chambers on April 9, 1996, involved an alleged deterioration of his behavior over the previous *two* days, not the entirety of the trial, which began on March 25, 1996 (R. 5453:17-18; R. 5444:39). Following defense counsel's presentation, the trial

The jury convicted petitioner as charged (R. 4893-96, 5099-5102, 5191-99), and imposed the death penalty for both murders (R. 4758-73). In a unanimous opinion, the Utah Supreme Court affirmed petitioner's conviction and sentence on direct appeal. State v. Lafferty, 2001 UT 19, 20 P.3d 342.[6]

STATEMENT OF FACTS

In 1983, petitioner was excommunicated from the LDS church, and in 1984, his wife, Diana, divorced him and took the children to Florida (R. 5437:9-14; R. 5445:58). Shortly thereafter, petitioner claimed that he had received a revelation from God that four people were to be "removed" (R. 5444:15; R. 5445:24).[7] Those four included Chloe Low, Richard Stowe, and Brenda Lafferty–wife of petitioner's younger brother Allen–all of whom petitioner believed had either helped his wife to obtain the divorce or been involved in his excommunication (R. 5444:15, 55-60; R. 5445:62-64). The

---

court asked counsel if he was asking for the court to take action (R. 5453:19). Defense counsel voiced his disagreement with the court's pre-trial determination that petitioner was competent to proceed to trial, but chose not to seek court action, deciding instead to continue with efforts to keep petitioner from prejudicing his case (R. 5453:21-22). That is why "[t]he court took no further action to review competency" at that time. Petition at 9.

[6]Pursuant to rule 15.2, respondent points out that, contrary to petitioner's representation, the videotape of the crime scene shown at the penalty phase did *not* show the infant's wounds (R. 5330). Petition at 10.

[7]The "removal revelation" was found in a note located in the pocket of one of petitioner's shirts (R. 5445:9-15). Using LDS scriptural parlance, it named the four individuals and indicated that they were obstacles in the Lord's path and must be removed (R. 5445:15).

fourth individual was Brenda's fifteen-month-old daughter, Erica (R. 5444:15, 60).[8] Thereafter petitioner claimed to have received another revelation that the removal must be accomplished by slitting the throats of the individuals (R. 5445:29-32; R. 5446:13-15, 81-82).

On July 24, 1984, petitioner and his brother, Dan, packed up petitioner's station wagon under the auspices of going hunting (R. 5446:19-20, 87-88). During the final preparations that day, petitioner commented that God wanted Brenda and Erica to die (R. 5446:87).

Petitioner, Dan, and two friends, Charles Carnes and Ricky Knapp, drove to Brenda's home in the early afternoon while Allen was at work, and petitioner and Dan forced their way into the house (R. 5444:45-47; R. 5446:21-26). Carnes and Knapp remained in the car (R. 5446:27). Carnes testified that for the first fifteen minutes that petitioner and Dan were in the house, Carnes heard what sounded like a "pretty good fight going, things breaking," Brenda screaming and begging that they not hurt her baby, petitioner calling Brenda names, and the baby calling for her mommy (R. 5446:26-28). Then everything went quiet, and five minutes later petitioner and Dan came out from the back of the house (R. 5446:27-29). The front of Dan's shirt was covered with blood, the forearms of both men were wet as if they had been washed, and petitioner had blood on the right side of his shirt (R. 5446:28-29). Carnes could smell the blood as the two got in the car, and he insisted that Dan change his shirt (id.).

---

[8]Petitioner later claimed that Erica had to be removed because she would grow up to be "a bitch like her mother" (R. 5444:60).

The foursome drove directly to Chloe Low's apartment, but no one was home (R. 5446:28-31). The driver, Knapp, thereafter missed the turn off to Richard Stowe's home, and they decided that they weren't meant to kill him at that point (R. 5446:39).

The foursome then headed to Wendover (R. 5446:39-40). During the drive, petitioner bragged about hitting Brenda as hard as he could, beating her, yelling at her, and calling her names while she pleaded with him to stop (R. 5446:40-41). Petitioner said that he had Dan hold Brenda on the floor while he cut a vacuum cleaner cord and tied it around her neck (id.). He then bragged that they carried her into the kitchen where petitioner used his knife to cut her throat, then opened the wound to let the blood flow freely (R. 5446:41-43). As he explained the events, petitioner pulled a knife from his boot, banged it on his knee, and said, "I killed her . . . . I killed the bitch . . . ." (R. 5446:42-43). Petitioner then handed the knife to Dan and said, "Thank you, Brother, for doing the baby because I don't think I had it in me," to which Dan replied, "It was no problem" (id.).

Allen found the bodies of his wife and infant daughter when he arrived home from work later in the day (R. 5444:45-49). Erica was slumped over in her crib; she had died from a five and one-half inch incision across her neck made by a very sharp object consistent with a ten-inch kitchen knife (R. 5445:131-33). Her spinal column and a little tissue was all that held her head to her body (R. 5445:131-32). Brenda was found on the kitchen floor lying in a pool of blood (R. 5444:47-49; R. 5445:153). She had an almost identical wound on her neck, together with wounds consistent with a cord being tightened around her neck and injuries consistent with a blunt force beating (R. 5445:134-37). The house was described as being the scene of a "tremendous struggle" (R. 3444:119-20).

ARGUMENTS

INTRODUCTION

The Court will grant a petition for writ of certiorari "only for compelling reasons." Supreme Court Rule 10. The Court has identified examples of the appropriate bases for granting a petition to review state court decisions: 1) a state court of last resort's disposition of an important federal question conflicts with another state court of last resort or a United States court of appeals; or 2) the state court's disposition of an important federal question that this Court has not, but should settle, or determination of the federal question in a way that conflicts with this Court's relevant decisions. Supreme Court Rule 10(b) & (c). The rule also recognizes that a petition "is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." Supreme Court Rule 10.

Petitioner identifies no "compelling reason" for review of this case.

POINT I

PETITIONER PRESENTS NO COMPELLING REASON FOR THIS COURT TO REVIEW THE STATE COURT'S UNANIMOUS DETERMINATION THAT, UNDER THE SPECIFIC CIRCUMSTANCES OF THIS CASE, THE TECHNICAL VIOLATIONS OF STATE STATUTORY LAW WHICH OCCURRED IN THE EXPEDITED COMPETENCY HEARING WERE HARMLESS AND "IN NO WAY" UNDERMINED THE COURT'S CONFIDENCE IN THE VERDICT

Petitioner complains of the Utah Supreme Court's application of a harmless error analysis in reviewing claims that the competency hearing held by the trial court did not comply in all respects with Utah Code Ann. § 77-15-1, *et seq.* (1995), which sets forth the procedures designed to protect against trying and convicting an incompetent defendant. Petition at 10-13. He argues that the harmless error findings of the Utah Supreme Court conflict with the fair hearing principles articulated by this Court in Drope v. Missouri, 420 U.S. 162, 95 S. Ct. 896, 43 L.Ed.2d 103 (1975), and Pate v. Robinson, 383 U.S. 375, 86 S. Ct. 836, 15 L.Ed.2d 815 (1966), and by the Tenth Circuit in McGregor v. Gibson, 248 F.3d 946 (10th Cir. Okla. 2001), because violation of procedural statutes created to protect constitutional rights can never be harmless. Petition at 13.

This Court has held that states must establish "adequate procedures" to protect accused individuals from being convicted while legally incompetent, in violation of their federal due process rights. Pate, 383 U.S. at 378. Petitioner does not challenge the

adequacy of Utah's statutes to meet this Court's directive. See Utah Code Ann. § 77-15-1, *et seq.* (1995). Instead, he argues that *any* violation of those statutory requirements constitutes a *per se* violation of his due process right, and that the Utah Supreme Court's application of a harmless error analysis to such procedural violations denied him his right to a fair hearing. Petition at 11-13.

This Court should deny petitioner's request for review because he presents no federal constitutional issue warranting this Court's discretionary review. He faults the state supreme court's determination that procedural errors such as occurred under the specific facts of this case can be harmless. However, such a claim does not establish a constitutional violation or support petitioner's position that any variation from the statutory procedures necessarily renders the statutory scheme constitutionally inadequate to protect his constitutional rights. The mere presence of constitutional underpinnings involving the establishment of the procedures outlined in Utah's statutes does not mean that any and all deviations from the statutory procedures violate the federal constitution in every case.

In this case, both the trial court and the state supreme court believed that the deviations in this case did *not* detract from the constitutional protections afforded by the statute, given the specific circumstances at hand. This was not a situation in which petitioner's competency was being challenged for the first time, requiring the amassing of relevant information and data from scratch. By the time the challenged competency hearing occurred, petitioner had already had multiple evaluations and re-evaluations by many court-appointed experts, including the eight to be involved in this hearing. State v. Lafferty, 2001 UT 19, ¶¶ 30, 36, 20 P.3d 342. They brought with them a wealth of information about

petitioner gleaned over time from numerous sources with which they could provide a more informed and complete evaluation in a shorter amount of time than could a newly-appointed examiner previously uninvolved in the case. The trial court was able to fully protect petitioner's rights by using a maximum of expertise, a broad information base, and explicit knowledge of this particular petitioner and his mentality, all brought together within a minimum amount of time.

As adequate protection for petitioner's constitutional rights was in place, and petitioner has not established that any of the alleged procedural violations rendered the statutory protections inadequate under the facts of this case, he has not presented a "compelling reason" to grant certiorari on this issue.[9]

This claim also does not present a "compelling reason" for review by this Court because the Utah decision is consistent with the cases cited in the petition. Those cases establish that, even in the total *absence* of a necessary competency hearing, reversal depends on the circumstances of each case. See Drope, 420 U.S. at 182-83 (where a second competency hearing *should* have occurred, the court reversed defendant's conviction because it was impossible, due to case-specific facts, to remand the matter for a nunc pro tunc determination of whether the accused was competent

---

[9]Further, the state supreme court did not apply the harmless error doctrine to one of petitioner's claimed errors because the court held that no error occurred. Lafferty, 2001 UT 19, ¶¶ 28, 31. Inasmuch as none of the experts were involved in "the current treatment" of petitioner, as forbidden by the statute, and the statute did not require the use of "independent examiners" as petitioner claims, there was no violation of the statute by use of the eight court-appointed alienists used in this case. Id. Where no error occurred, no constitutional violation is implicated.

to stand trial); Pate, 383 U.S. at 387 (reversal granted for the *absence* of any inquiry into competence because of the case-specific fact that six years had passed since trial, rendering any retrospective determination of defendant's competence to stand trial "difficult[]"); McGregor, 248 F.3d at 963 (no automatic reversal for use of an unconstitutional burden of proof at the pre-trial competency hearing; defendant met his burden of proof on appeal, and reversal was ordered "because of the particular balance of circumstances in this case.").

The Utah Supreme Court determined that, under the specific circumstances of this case, reversal was not required. Lafferty, 2001 UT 19, ¶¶ 31, 32, 37, 42. Petitioner does not challenge the state supreme court's implementation of the harmless error doctrine, only its applicability to this situation. Accordingly, there is no conflict with the prior rulings of this Court upon which to base certiorari review.

Under the circumstances of this case, everything the statute required the parties and the court to know and consider was adequately presented with full opportunity to cross-examine the experts. The necessary safeguards to petitioner's constitutional right to a fair hearing were in place and a result contrary to petitioner was reached based on the facts of this case. Discretionary review by this Court is not warranted.[10]

---

[10]In any event, the facts of this case are sufficiently unusual that review of this case is unlikely to affect other cases, and discretionary review is unwarranted. While there were some technical violations of the statute, the procedures followed regarding petitioner's competency were more than adequate to ensure that petitioner received the fair hearing to which he was entitled. In fact, the procedure arguably provided more protection for petitioner than was required by the statute and ensured that his

POINT II

PETITIONER PRESENTS NO COMPELLING REASON FOR THIS COURT TO REVIEW THE STATE COURT'S UNANIMOUS DETERMINATION THAT CONCERNS VOICED BY PETITIONER'S COUNSEL AND AN EXPERT CONCERNING HIS TRIAL BEHAVIOR DID NOT ESTABLISH A BONA FIDE DOUBT AS TO HIS CONTINUED COMPETENCY SO AS TO REQUIRE AN ADDITIONAL COMPETENCY HEARING

Petitioner seeks review of the Utah Supreme Court's determination that the concerns of petitioner's counsel and a medical doctor, expressed two weeks into trial and in a post-trial motion to dismiss, did not raise a bona fide doubt about petitioner's competency during the trial after the initial competency hearing, as required by section 77-15-5(1). Petition at 13-15. This claim states no basis for review.

First, petitioner does not challenge the state court's articulation of the appropriate standard to be applied to such a claim. Instead, he complains only that the court misapplied it. Review "is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." Supreme Court Rule 10. Petitioner fails to establish that this case is a "rare" case which might warrant certiorari review.

---

rights would be protected so that he would not proceed to trial if he were not competent. To the extent a retroactive determination of competency to stand trial could ever be made, this case presents the circumstances under which such a determination could occur.

The Utah Supreme Court not only applied the proper standard, but acknowledged this Court's rulings in Pate v. Robinson and Drope v. Missouri—cited in the petition—in determining that standard and the factors relevant to the inquiry. Lafferty, 2001 UT 19, ¶ 54. Taking into account those factors and conducting its own review of the affidavits offered by petitioner regarding his conduct during trial, the state court agreed with the trial court in concluding that petitioner raised no new questions from those already addressed in the March 1996 competency hearing and, hence, had not established a bona fide doubt as to his competency so as to require a new hearing. Lafferty, 2001 UT 19, ¶¶ 55-57.

Petitioner now complains that the evidence "should have raised a bona fide doubt to the trial court as to the competency of the Petitioner." Petition at 15. Petitioner merely re-argues the evidence and disagrees with the result reached by both lower courts. His disagreement with the Utah Supreme Court's assessment of the evidence under the proper standard does not warrant this Court's discretionary review.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for writ of certiorari.

Respectfully submitted this 9th day of October, 2001,

MARK SHURTLEFF
Utah Attorney General
J. FREDERIC VOROS, JR.
Chief, Appeals Division
KRIS S. LEONARD*
Assistant Attorney General
Counsel for Respondent
Utah Attorney General's Office
160 East 300 South, 6th Floor
P O BOX 140854
Salt Lake City, UT 84114 -0854
Telephone: (801) 366-0180

* Counsel of Record